

**INTER-LOCAL AGREEMENT BETWEEN
DURHAM COUNTY AND THE CITY OF DURHAM**

THIS INTER-LOCAL AGREEMENT is entered into by the **COUNTY OF DURHAM**, a political subdivision of the State of North Carolina, (County) and the **CITY OF DURHAM**, a municipal corporation organized and existing under the laws of the State of North Carolina (City) and together collectively the COUNTY and the CITY may be referred to as the “Parties.” This Agreement shall be effective on the _____ day of _____, 2019 (Effective Date).

BACKGROUND

- A. The Whitted School project was the renovation of the historic Whitted School building previously owned by the County, together with the construction of a new building on the same site (collectively, the “Project”). The Project includes 79 units of senior housing, as well as a public preschool. The Project was developed as a public private partnership using fund historic tax credits, housing tax credits, a HUD mortgage, and funds provided by the City and the County.
- B. The Project was developed by Whitted School Redevelopment, LLC, a single purpose limited liability company (“WSR”) formed by Integral Development, LLC (the “Developer”) under an Amended and Restated Operating Agreement dated as of December 1, 2015 (as amended from time to time, including in connection with any additional contributions, the “Operating Agreement”). In order to participate in the development, the County formed a North Carolina non-profit corporation, Durham County Public Corporation (“DCPC”), which in turn owns Durham Whitted Corporation, a North Carolina corporation (“DWC”), which is the Class B Member of WSR. As the Class B Member, DWC is entitled to certain rights benefits under the Operating Agreement.
- C. The Developer experienced significant cost overruns during the construction and renovation of the Project, which have prevented the Project from reaching final endorsement with the United States Department of Housing and Urban Development under the HUD mortgage, which will also allow the final tax credit investor dollars to be contributed to the Project. Although both the affordable housing and school facility have been in service and functioning properly since 2017, construction liens on the property need to be released in order to reach final endorsement.
- D. The City, the County and the Developer have agreed to contribute additional funds to pay the costs of construction and renovation necessary for the contractor to release its liens on the Project.
- E. Pursuant to N.C.G.S. § 160A-456, the City is authorized to appropriate and expend funds for community development programs and activities. The Durham City Council desires to support the affordable housing within the Project and therefore, by this Agreement, the City is conveying funds to the County for use to reach final endorsement for the Project, thereby maintaining the current affordable housing.
- F. This Agreement is made as an Interlocal Cooperation Agreement (ILA) pursuant to the General Statutes of North Carolina at Chapter 160A, Article 20, Part 1.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1

PURPOSE

The purpose of this ILA is to establish the expectations for City funds to be used by the County so that the Project can reach final endorsement for the Project (“City Funds”).

ARTICLE 2 TERM AND TERMINATION

- A. Term.** The term of the City’s obligation to make a payment under this Agreement shall be for one (1) year from the Effective Date, unless this Agreement is earlier terminated pursuant to this Article.
- B. Termination.** The Parties agree that each Party may, without cause and in its discretion, terminate this contract for convenience by giving the other Party written notice of the termination, which shall be effective at the time indicated in the notice.

ARTICLE 3 COUNTY AGREEMENTS

The County agrees:

- A.** To use the City Funds during the Term in order to make an additional capital contribution (through DCPC and DWC) to WSR so that it can reach final endorsement for the Project.
- B.** Upon expiration or termination of this ILA, if the City Funds have not been used as described in A. above or are still in the possession of the County, the County shall return the City Funds to the City.
- C.** To the extent that the County, through DWC as a Class B Member under the Operating Agreement, receives any distribution or other return on its capital investment in WSR, the County agrees to pay over to the City an amount which reflects the City’s proportionate contribution, which is eight and three-fourths percent (8.75%) of the total equity contribution by the Class B Member (the “City Repayment”). The County further agrees that the City has the right to demand and receive the City Repayment within 15 days after the County (through DWC) receives a final distribution of equity under the Operating Agreement.

ARTICLE 4 CITY AGREEMENTS

The City agrees:

- A.** To convey \$681,000 to County as the City Funds in connection with the County’s contribution of additional funds to WSR (through DCPC and DWC) under the Operating Agreement. The City will provide such funds to the County within __ business days of the County’s request therefor, to be delivered by wire transfer to the account indicated by the County.

ARTICLE 5 MISCELLANEOUS

The Parties agree:

- A. Headings.** The subject headings of the sections are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This contract shall be deemed to have been drafted by both Parties and no interpretation shall be made to the contrary.
- B. Governing Law.** This Agreement shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Agreement shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.
- C. Amendments.** No modification or amendments of this Agreement will be valid or binding upon any Party unless in writing and signed by the Party against whom the modification or amendment is asserted.
- D. Entire Agreement.** This Agreement, including any attachments shall constitute the entire understanding between the Parties and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.
- E. E-Verify.** The Parties agree that this Agreement is subject to the E-Verify requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and any contractor, subcontractor performing services because of this Agreement shall be required to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.
- F. No Third Party Rights Created.** This contract is intended for the benefit of the City and the County and not any other person.
- G. Insurance.** The City and County agree to each cover its own risks for liability through either obtaining insurance or by self-insuring itself against any risk. Each shall furnish the other with evidence of such insurance, if any, upon request.
- H. Severability.** In the event any term or provision of this Agreement shall be adjudged to be partially or completely invalid or unenforceable, then such term or provision shall be severed from this Agreement, and the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

[Remainder of page intentionally left blank; signatures on following page]

IN WITNESS WHEREOF, the Parties have approved this Agreement and have caused it to be signed by the County Manager by approval of the Board of County Commissioners and the City Manager by approval of the City Council duly attested, the year and day first written above.

COUNTY OF DURHAM

BY: Wendell M. Davis, County Manager

ATTEST: _____

CLERK

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

By: _____
Susan F. Tezai
Chief Financial Officer
County of Durham, North Carolina

CITY OF DURHAM

BY: Thomas J. Bonfield, City Manager

ATTEST: _____

CLERK

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

By: _____
David Boyd
Director of Finance
City of Durham, North Carolina